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Australia failing to uphold the human rights of people in custody, including children, says AMA

Australia continues to fail to uphold the basic human rights of young people in the legal system and all people in custodial settings, with systemic racism entrenched, the Australian Medical Association has said.

In a new position statement released today the AMA has called on governments to ensure the medical and health rights of young people and adults in custody and has once again called for the age of criminal responsibility in all jurisdictions to be raised to a minimum of 14 years of age.

AMA President Professor Steve Robson said the fundamental human rights of all people must be upheld in custodial settings, including through access to safe and appropriate health care at all stages of the custodial cycle and by raising the age of criminal responsibility to a minimum of 14 years of age.

“On an average night in the June quarter of 2021, there were 677 children between the ages of 10–17 in detention facilities. The AMA strongly maintains these facilities are no place for children — they are not rehabilitative and have deeply adverse effects on physical, psychological and emotional development,” Professor Robson said.

He said the 2023 AMA Custodial Health Position Statement updates the previous AMA position, with an emphasis on Aboriginal and Torres Strait Islander community-controlled services, culturally safe health care services and stronger supports for people who are leaving custody, returning to the community.

“It is imperative people in custodial settings retain their entitlement to the Medicare Benefits Scheme and the Pharmaceutical Benefits Scheme to ensure access to appropriate health care and treatment. The principle of universal access should be extended to people in custody to ensure a standard of care equivalent to that within the Australian community.

“The Australian Institute of Health and Welfare reports 40 percent of prison entrants reporting having had a mental disorder at one point in their lives and yet they are unable to establish a Mental Health Treatment Plan while in custody. Aboriginal and Torres Strait Islander peoples in custodial settings cannot access the MBS 715 health check, which is a key intervention in managing chronic disease. People with complex medical conditions that require high-cost drugs have their treatment determined by state justice health departments – not the PBS. This is not equitable,” Professor Robson said.

He said custodial health providers also needed to ensure people had access to appropriate mental health care, primary and specialist care services and continuity of care with community health and other service providers, post-release. Lack of access to MBS fragmented care, with people having to start again on their health journey after release.

“Aboriginal and Torres Strait Islander peoples comprise approximately 3.8 percent of the total Australian population, yet as of June 2021, represented 30 percent of the prison population.

“The disproportionately high rates of incarceration of Aboriginal and Torres Strait Islander peoples in Australia must be redressed through fundamental policy and legislative reform and investment in community-driven diversionary and rehabilitation programs as outlined in the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*,” Professor Robson said.

“The impacts of systematic racism in the Australian legal system must be redressed, as well as more broadly across education, health, housing, employment and land rights to ensure Aboriginal and Torres Strait Islander peoples experience self-determination, good health, and equal opportunities.”

Professor Robson said culturally safe health care was essential for custodial settings and should be prioritised through staff training and appropriate health programs at all stages of the custodial cycle.

“The growth of the Aboriginal and Torres Strait Islander workforce across the legal system, including in health service delivery, must also be a priority for governments,” he said.

[Read the AMA position statement.](#)

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